

REMARKS

This Application has been carefully reviewed in light of the Final Office Action mailed February 12, 2009, which contains a new basis for rejection. At the time of the Final Office Action, Claims 31-38 were pending in this Application. Claims 31-38 were rejected and Claims 1-30 were previously canceled without prejudice or disclaimer. Applicants hereby responds to the new basis for rejection and respectfully request reconsideration and favorable action in this case.

Rejections under 35 U.S.C. §103

Claims 31-38 were rejected under 35 U.S.C. §103(a) as being unpatentable over International Application No. WO 01/28171 A1 by Kalevi Ratschunas, et al. (“*Ratschunas*”) in view of U.S. Patent No. 7,127,264 issued to Daniel Hronek, et al. (“*Hronek*”).

Applicants respectfully traverse and submit the cited art combination, even if proper, which Applicants do not concede, does not render the claimed embodiment of the invention obvious.

In order to establish a *prima facie* case of obviousness, the references cited by the Examiner must disclose all claimed limitations. *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974). Even if each limitation is disclosed in a combination of references, however, a claim composed of several elements is not proved obvious merely by demonstrating that each of its elements was, independently, known in the prior art. *KSR Int'l. Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1741 (2007). Rather, the Examiner must identify an apparent reason to combine the known elements in the fashion claimed. *Id.* “Rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *Id.*, citing *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006). Finally, the reason must be free of the distortion caused by hindsight bias and may not rely on *ex post* reasoning. *KSR*, 127 S.Ct. at 1742. In addition, evidence that such a combination was uniquely challenging or difficult tends to show that a claim was not obvious. *Leapfrog Enterprises, Inc. v. Fisher-Price, Inc. and Mattel, Inc.*, 485 F.3d 1157, 1162 (Fed. Cir. 2007), citing *KSR*, 127 S.Ct. at 1741.

The prior art does not teach or suggest the invention as claimed. Claim 31 recites “wherein, upon non-delivery of the data to the second communications unit, the transmission status message includes a non-delivery reason *which is selected from at least two non-delivery reasons*, wherein the at least two non-delivery reasons are that the data could not be delivered to the second communications unit and that the data could have been delivered, but were not received by the second communications unit.” (emphasis added). Claim 38 recites a similar feature. “An object of the present invention is, therefore, to offer the transmitter or sender of data, particularly of a multimedia message (MM), *a more detailed item of information concerning the deliverability of the data which it has sent.*” (Specification at [0011]) (emphasis added). By providing more detailed information concerning the deliverability, the sender may then make informed decisions about whether to resend the message.

It is possible with the switching arrangement described to notify the sender, or the first communications unit, of a message if data which it has sent to a recipient, or the second communications unit, could not be delivered to the recipient at all. *The sender can then decide, for example, to send the corresponding data again.* Compared with the currently known state of the art on this matter, the *sender is therefore given the opportunity to distinguish the non-availability of a recipient from the status in which the recipient has not called up data provided for it, since it did not wish to receive the messages or was simply prevented from calling up the data (for example, due to technical problems).*

(Specification at [0028]) (emphasis added). Rather than a simple delivery confirmation, the specification teaches that more detailed delivery information is provided.

FIG. 3 shows, in general terms, the possible statuses 212 of the status field "X-Mms-Status" 210 in the message of the type "M-Delivery.ind" which is explained in detail in FIG. 4. A number of statuses are currently defined in the MMS specification [2, 5] which are transmitted in an MMS delivery status notification or transmission status messages "M-Delivery.ind." The various statuses indicate whether the MM has been transmitted successfully to the recipient (status: "retrieved"), whether the MM has been rejected by the recipient (status: "rejected"), whether the recipient has received the notification concerning the arrival of the MM in its mailbox and can download it later (status: "deferred"), whether the recipient has not recognized the MM (status: "unrecognized") and whether the recipient has not downloaded the

MM within the period of validity and has therefore not received it in full (status: "expired")

(Specification at [0050]). Thus, the invention requires that "upon non-delivery of the data to the second communications unit, the transmission status message includes a non-delivery reason *which is selected from at least two non-delivery reasons.*"

The rejection admits that "Ratschunas fails to specifically disclose that the non-deliver reason is selected from at least two non-delivery reasons." (OA at 4). Hronek is therefore cited as disclosing

a non-delivery reason which is selected from at least two non-delivery reason, wherein the at least two non-delivery reasons are that the data could not be delivered to the second communications unit (figure 6; col. 3, lines 42-49; when the attempted delivery of the short message failed because the intended user was out of the service area) and that the data could have been delivered, but were not received by the second communications unit (figure 6; col. 3, lines 42-49; when the attempted delivery of the short message failed because the intended user had his or her communication device turned off).

(OA at 4). This premise of the rejection fails, however, because Hronek does not teach or suggest "the transmission status message includes a non-delivery reason *which is selected from at least two non-delivery reasons.*" Rather, Hronek merely teaches that a single "failure" message is sent no matter what the reason for the delivery failure.

When the attempted delivery of the short message has failed because, for instance, the intended user was out of the service area, or had his or her communication device turned off, *the MSC 603 informs the HLR 602 of the failure.* The HLR 602 then turns on an SMS notification indicator flag for the subscriber, and the SMSC 601 retains the failed message for a later delivery attempt.

(Hronek at 3:43-49) (emphasis added). Hronek merely "informs the HLR of the failure," without providing any information as to the reason for the delivery failure. This fact is confirmed by Hronek's teaching that the HLR do only one action in response to being informed of the failure. Specifically, Hronek teaches that "HLR 602 then turns on an SMS notification indicator flag for the subscriber, and the SMSC 601 retains the failed message for a later delivery attempt." Hronek does not teach or suggest deciding between sending the message again or discarding the message because the HLR has not receive sufficiently

detailed information from the delivery failure message to inform such a decision. Thus, Hronek fail to teach or suggest “the transmission status message includes a non-delivery reason *which is selected from at least two non-delivery reasons.*” The invention as claimed in claims 31 and 38 is patentable in view of the combined teachings of Ratschunas and Hronek. The invention as claimed in the dependent claims is patentable for similar reasons.

Association of Customer Number and Change of Correspondence Address

Applicants respectfully request that all papers pertaining to the above-captioned patent application be associated with Customer No. **86528**, and direct all correspondence pertaining to this patent application to practitioners at Customer Number **86528**. All telephone calls should be directed to counsel at 512.457.2026. A Request for Change of Correspondence Address form is filed herewith.

ATTORNEY DOCKET
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CONCLUSION

Applicants have now made an earnest effort to place this case in condition for allowance in light of the remarks set forth above. Applicants respectfully request reconsideration of Claims 31-38 as amended.

Applicants respectfully submit a Petition for One-Month Extension of Time. The Commissioner is authorized to charge the fee of \$130.00 required to Deposit Account 50-4871 of King & Spalding LLP in order to effectuate this filing.

Applicants believe there are no additional fees due at this time, however, the Commissioner is hereby authorized to charge any fees necessary or credit any overpayment to Deposit Account No. 50-4871 of King & Spalding L.L.P.

If there are any matters concerning this Application that may be cleared up in a telephone conversation, please contact Applicants' attorney at 512.457.2026.

Respectfully submitted,
KING & SPALDING L.L.P.
Attorneys for Applicants



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Date: 6/10/09

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